

**To:** Chan, Janice[Chan.Janice@epa.gov]  
**From:** Danielle Diamond  
**Sent:** Fri 12/18/2015 3:16:20 AM  
**Subject:** CAFO CAA Research RE AZ egg laying operation  
[federal air compliance agreement .pdf](#)

Ms. Chan

In our discussion yesterday, you requested that I send to you some of the research that I have done that shows EPA's authority to require a new source review and Title V permitting for the egg-laying CAFOs in Maricopa County.

I'm attaching EPA's 2005 CAFO Air Compliance Consent Agreement and Final Order. I believe it is clear from this document that EPA's position is that the CAA applies to CAFO emissions if they exceed certain thresholds, particularly those emissions coming from buildings or structures. It should be noted that CAFOs that entered into the Consent Agreement were essentially exempt from enforcement if they violated the CAA, but not exempt from new source review, permitting or EPCRA. And obviously those not participating have been and continue to be subject to CAA new source review and permitting, EPCRA and enforcement (see the second paragraph on page 4959). I do not believe the Hickman's Arlington site was involved in the Consent Agreement and there is no way the Tonopah site could have been, since it has just been built recently.

I also think it's important to look at the definition of fugitive emissions under federal regulations for new source review. As noted in my previous email, the County seems to dismiss the applicability of CAA new source review requirements for the Tonopah facility by reasoning that its emissions are fugitive. However, according to 40 C.F.R. § 51.165 (a)(1)(ix), fugitive emissions are "those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening." In the case at hand, both egg laying facilities are enclosed barns with ventilation systems (i.e., vents), so their emissions cannot be considered "fugitive."

With this in mind, I will note that our emissions calculations for both facilities in the October 2015 complaint were based only on the emissions coming from the egg-laying barns themselves, and not the manure sheds or manure stacks at the Arlington facility, fertilizer plant, etc. Therefore, just the emissions from the barns themselves meet regulatory thresholds under the CAA non-attainment area for VOCs and both of the operations should have had new source review before construction. (Note, the Tonopah facility is expanding and more buildings are being added at the present time and so the current emissions from the facility would likely be on the greater end of our estimates. At its planned maximum capacity, the facility will far exceed regulatory thresholds.)

It should also be pointed out that it is our understanding that all of the poultry waste from both the Arlington CAFO site and the Tonopah CAFO site is being accepted by the fertilizer plant at the Arlington site where it is being processed and manufactured into fertilizer. It is quite possible the fertilizer plant should be looked at as another independent industrial source under the CAA and EPCRA. We did raise this issue as it

relates to EPCRA reporting in our October 2015 complaint. But either way, even if the very visible emissions from the waste piles at the fertilizer plant in the video you saw are somehow deemed "fugitive," such should be considered a separate issue from the VOC emissions that are being emitted from the barns themselves at both sites.

I will soon be following up with you to try to set up a time with a local narrator for the video as requested, but please feel free to contact me at any time should you have any questions or wish to discuss anything here further.

Danielle Diamond

Danielle Diamond, Executive Director  
Socially Responsible Agriculture Project  
815.403.0278  
[danielled@sraproject.org](mailto:danielled@sraproject.org)  
[www.sraproject.org](http://www.sraproject.org)  
Don't forget to find us on Facebook!